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DIRECTOR OFFICE
DECISION TECHNOLOGY CENTER 2600
ON PETITION

HAMILTON, BROOK, SMITH & REYNOLDS, P.C.
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In re Application of:
Ferguson et al.
Application No. 09/288,229
Filed: April 8, 1999
For: **SYSTEM AND METHOD FOR ALWAYS
ON VIRTUAL CONNECTIVITY IN A
WIRELESS SYSTEM**

This is a decision on the Petition filed April 23, 2003, which is being treated under 37 C.F.R. § 1.181(a) to withdraw the holding of abandonment. No fee is required.

A Notice of Abandonment was mailed February 26, 2003 for failure to timely respond to the Office action mailed March 15, 2002.

Petitioner alleges to have timely submitted a response to the Office action. In support, the Petitioner has provided a copy of a date-stamped return postcard acknowledging receipt of the response in the U.S. Patent and Trademark Office on August 16, 2002. Petitioner has submitted a copy of the response with the petition.

The original response is not of record in the file and cannot be located. However, M.P.E.P. 503 states, "[a] post card receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the PTO of all items listed thereon on the date stamped thereon by the PTO." Accordingly, it is concluded that the amendment was received in the Office but was not matched with the application file.

The date stamped on the post-card, August 16, 2002, is beyond the due date for the response. However, under 37 CFR 1.8(a)(1) correspondence is considered timely if: (1) the correspondence is mailed or transmitted prior to expiration of the set period for response by being properly addressed to the Patent and Trademark Office as set out in 37 CFR 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail or transmitted to the Patent and Trademark Office in accordance with 37 CFR 1.6(d); and (2) the correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have a reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

The correspondence documents bear a proper certificate of mailing with a deposit date of August 14, 2002 in compliance with the requirements of 37 CFR 1.8(a)(1) as set forth above. Accordingly, the Notice of Abandonment is hereby vacated and the Holding of Abandonment withdrawn.

For the reasons above, the petition is **GRANTED**.

The application file will be forwarded to the examiner for further action in due course.

Allen R. MacDonald, Director
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Communications